Master Mechanical Insulation, Inc. ***and*** **Ronnie Lynn Kincaid.** Case 9–CA–32488

April 11, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On October 18, 1995, Administrative Law Judge Lowell M. Goerlich issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt his recommended Order as modified.

The judge found, and we agree for the reasons stated by him, that the Respondent violated Section 8(a)(3) and (1) by discriminatorily laying off the Charging Party, Ronnie Lynn Kincaid, on July 14, 1994,[3] because he complained to the Union about the Respondent's failure to pay him overtime and a shift differential as specified by the collective-bargaining agreement between the Respondent and the Union. Contrary to the judge, however, we find that the Respondent did not violate the Act by refusing to hire Kincaid when he was referred from the Union's hiring hall on July 18.

On the afternoon of Friday, July 15, the Respondent transmitted a manpower request to the hiring hall in Huntington, West Virginia, requesting five certified employees for an asbestos removal job in Marietta, Ohio, beginning at 7:30 a.m., Monday, July 18.[4] That Monday, Kincaid called the hiring hall and was told by Michelle Richards, the receptionist, that the Respondent had a manpower request pending. Kincaid reported to the hiring hall and was referred out at approximately 2 p.m. that day. He and another referred employee, Dave Whipkey, went to the Respondent's offices. According to Kincaid's testimony, which the judge generally credited, the two were completing employment forms when Project Manager Ron Hampton walked into the room, looked ''angrily'' at Kincaid, and walked out. Minutes later, Hampton returned with the Respondent's executive vice president, Richard Meckstroth, who told Kincaid and Whipkey that two employees referred by the Union that morning had been hired for the job and that the Respondent had transferred employees from another project to fill the remaining manpower needs for the job. Meckstroth informed them that they would receive 2 hours ''show up'' pay and then contacted the Union to cancel the July 15 manpower request because the Respondent had already filled the job.

Although we find that the General Counsel established a prima facie case that the refusal to rehire Kincaid on July 18 was unlawful given his unlawful layoff 4 days earlier and the parties' stipulation that there was work of the type Kincaid could perform throughout the relevant time period, we conclude that the Respondent met its burden of showing that the same action would have been taken even in the absence of the protected activity.[5] In particular the record establishes that the Respondent would not have hired Kincaid for the job in question, irrespective of his union activity, because he was referred several hours after the Respondent had already manned the job. The General Counsel has not contested the Respondent's evidence that it had fully manned this job prior to receiving notice that Kincaid had been given the referral.

We emphasize that our reversal of the judge on this issue does not affect the make-whole remedy for the Respondent's unlawful layoff of Kincaid. In *Dean General Contractors*, 285 NLRB 573, 573–574 (1987), the Board stated:

> Although we recognize that employment patterns in the construction industry have unique characteristics and jobs are frequently of short duration, these general characteristics, standing alone, do not justify a departure from our traditional make-whole remedy prior to compliance. We simply do not now know, as a factual matter, whether the Respondent would have transferred or reassigned Murphree elsewhere. Indeed, although jobs in the construction industry are frequently of short duration at a single project, that is not always the case. The industry is also composed, to some ex-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We find no merit in the Respondent's exception that the complaint should be dismissed on the ground that the case should have been deferred to the grievance-and-arbitration machinery of the collective-bargaining agreement between the Respondent and Local 203, Asbestos Insulation Workers Union (the Union), pursuant to *Collyer Insulated Wire*, 192 NLRB 837, 839 (1971). The Respondent failed to raise deferral as an affirmative defense in its answer to the complaint or at the hearing, and its interjection of this defense after the hearing closed is rejected as untimely. *MacDonald Engineering Co.*, 202 NLRB 748 (1973). Accord: *15th Avenue Iron Works*, 301 NLRB 878, 879 (1991), enfd. 964 F.2d 1336 (2d Cir. 1992).

[3] All dates refer to 1994 unless otherwise stated.

[4] The record indicates that Ohio, West Virginia, and other States each have special licensing requirements for asbestos removal workers.

[5] *Wright Line*, 251 NLRB 1083 (1980), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

tent, of ''permanent and stable'' work forces. Further, in either case it is not unusual for employers to carry over or request selected employees from jobsite to jobsite. Determination of whether an employee may have been transferred or reassigned elsewhere is a factual question and, as such, is best resolved by a factual inquiry at compliance. [Footnotes omitted.][6]

The record in the instant case establishes that the Respondent retained a ''core'' group of employees whom it transferred from jobsite to jobsite, that it had special recall rights under the collective-bargaining agreement which it sometimes exercised, and that it transferred or assigned even noncore employees to various jobsites as necessity dictated. Indeed, had Kincaid not been unlawfully laid off on July 15, he might have been assigned or asked to work at another site, including the Marietta, Ohio project, on July 18. Thus, notwithstanding our finding that the Respondent did not unlawfully refuse Kincaid's referral for the project on that day, that job, as well as others that the Respondent was in the process of working and those secured after his layoff, may be considered in compliance proceedings.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and orders that the Respondent, Master Mechanical Insulation, Inc., Huntington, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete the words ''or refusing to rehire him'' from paragraph 1(a).

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT lay off or otherwise discriminate against an employee because he lodged a complaint or grievance with the Union in respect to an alleged contract violation.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Ronnie Lynn Kincaid full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and WE WILL make him whole for any loss of earnings and other benefits resulting from his layoff, less any net interim earnings, plus interest.

WE WILL notify Ronnie Lynn Kincaid that we have removed from our files any reference to his layoff and that such files will not be used against him in any way.

MASTER MECHANICAL INSULATION, INC.

Vyrone Cravanas, Esq., for the General Counsel.
Fred F. Holroyd, Esq., of Charleston, West Virginia, for the Respondent.
Ronnie Lynn Kincaid, of Mt. Lookout, West Virginia, in propia persona.

DECISION

STATEMENT OF THE CASE

LOWELL M. GOERLICH, Administrative Law Judge. The charge in this case filed by Ronnie Lynn Kincaid, an individual, on January 9, 1995, was served on Master Mechanical Insulation, Inc. (the Respondent), on January 10, 1995. A complaint and notice of hearing was issued on February 21, 1995. The complaint among other things alleges that the Respondent terminated Kincaid and refused to rehire him because he engaged in union activity in violation of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act).

The Respondent filed a timely answer denying that it had engaged in the unfair labor practices alleged.

The complaint came on for hearing at Huntington, West Virginia, on August 15, 1995. Each party was afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, to argue orally on the record, to submit proposed findings of facts and conclusions, and to file briefs. All briefs have been carefully considered.

On the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT, CONCLUSIONS, AND REASONS THEREFOR

I. BUSINESS OF RESPONDENT

At all material times, Respondent, a corporation, has been engaged in business as an insulation and asbestos removal contractor out of its Huntington, West Virginia facility.

During the past 12 months, Respondent, in conducting its operations described above, provided services valued in excess of $50,000 for customers located outside the State of West Virginia.

At all times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[6] See also *Durham Transportation*, 317 NLRB 785, 787 (1995).

II. THE LABOR ORGANIZATION INVOLVED

At all times material, the International Association of the Heat and Frost Insulators and Asbestos Workers, Local 203 (the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The General Counsel claims that Ronnie Lynn Kincaid was discharged and later not rehired because he took a grievance against the Respondent to the Union. To support his prima facie case, the General Counsel offered the following material evidence.

The Respondent and the Union maintained an arrangement whereby the Respondent hired employees through the union hiring hall. However, under the arrangement the Respondent was allowed to rehire employees who had worked for it within the 90 days from the date of termination without going through the union hiring hall. On June 29, 1995, the Respondent requested five insulation strippers through the union hiring hall. Kincaid was one of the persons referred by the Union. Kincaid commenced work for the Respondent on June 30, 1994, as an asbestos abatement worker.[1] Kincaid was an experienced supervisor who was well qualified for the job. In fact while working for the Respondent he was offered a supervisor's job which he refused because the wages were not satisfactory.

Kincaid had taken lead abatement training at the U.S. EPA Regional Lead Training Center at the University of Maryland.

Kincaid was assigned to the Cabell Huntington Hospital project where he worked full time doing for the most part, floor tile removal. In addition, after he had concluded his day at Cabell Huntington Hospital he worked at Marshall University three or four times on the evening shift. Billy Ray Jude was Kincaid's supervisor on the Cabell Huntington Hospital project and Dave Dilley was his supervisor at the Marshall University project. Kincaid believed that on these jobs the Respondent was not paying the contractual overtime or the shift differential. Kincaid contacted Joel Ross (now deceased), the business agent for Local 80, the Insulators, and for Region Local 203, the Asbestos Workers by phone. Kincaid related to Ross that Dilley told him that he would be receiving straight time for overtime worked at Marshall. On July 7, 1994, Kincaid met with Ross at the union hall. Kincaid showed Ross ''pay stubs and a sheet showing the actual hours worked and what [he] believed [he] was due in terms of overtime and shift differential.''

On July 7, on the behest of Ross, Kincaid was interviewed for a supervisor's job with the Respondent which as noted above Kincaid refused. When Kincaid returned to work, Jude asked him why he refused the supervisor's job. Kincaid explained. Jude commented that ''they'' were wondering ''why he was at the Union hall anyway, just prior to their receiving a call setting [him] up for an interview.''(Tr. 37–38.) Dilley also questioned Kincaid regarding ''Why I was at the hall anyway.'' (Tr. 39.)

Kincaid discussed his complaint with another employee, James Brian Mills. Mills testified that he had talked to Kincaid about Kincaid's complaints.

Kincaid described his departure:

> Q. Okay. And did you work the entire week of the 13th?
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> A. I worked Monday through July 14.
>
> Q. Okay. Tell me about July 14th, what happened on the 14th?
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> A. On the—in the middle of the afternoon shift, approximately 2:30, my supervisor, Bill Jude, came to the work area where I was working. He asked me to pick up my tools or any personal possessions and to follow him, which I did.
>
> And he led me to the outside of the hospital facility, at which point he gave me two envelopes and asked me to open them. I opened them. And they contained two paychecks, one for the previous week and one for that immediate week, and also a layoff slip which indicated that I was ''Laid off due to permanent lack of work, XXX.'' [Tr. 47.]
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> . . . .
>
> Q. Okay. And did you have a conversation with Mr. Jude?
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> A. Uh—Mr. Jude told me that—he said, ''Ronnie, I have absolutely no problems with your work, but they are making me do this.''
>
> I told him that I didn't consider it fair and that I knew, based on our previous conversations, that they had projected a considerable—a considerable amount of work at that facility and that I intended to go to the hall and file a grievance.
>
> Q. Did you say anthing else?
>
> A. He asked me to look at my paychecks and make certain that they were correct. And I noted, with some surprise, that I had received overtime pay. But, I also mentioned to Mr. Jude that I had received no shift differential.
>
> Q. And what did he say at that point?
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> A. Uh—he said, ''Well, you know, I'm just a small guy here,'' that you know, it was all a matter out of his control. [Tr. 47–48.]
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> . . . .
>
> Q. All right. When Mr. Jude laid you off on the 14th, you testified that he told you ''They are forcing me to do this because they don't like you running down to the hall,'' is that what you remember him saying?
>
> A. Right. He—he said, ''I have absolutely no problem with your work, but they're making me do this. They[2] don't like you running down to the hall.'' [Tr. 69.]

On Friday, July 15, 1994, at 4 p.m., the Respondent requested that the Union send five insulation strippers with Ohio certificates for Monday at 7:30 a.m., July 18, 1994. The Union made the referrals. Kincaid was one; he appeared at the Respondent's office on July 18, 1994, around 2 p.m. He was greeted by the receptionist who gave him W-2 forms and personnel forms to complete. Kincaid commenced filling

[1] ''As an abatement worker, we construct plastic containments around asbestos where it is to be removed and then we wet the material and remove it properly and bag it or package it for disposal at an EPA approved land site.''

[2] ''They'' obviously referred to Jude's superiors.

out this form. Another person, Dave Whipkey, one of Kincaid's fellow workers, had completed his forms.

Shortly thereafter Ron Hampton, a project manager, appeared. He looked at Kincaid ''angrily'' (Tr. 52) and then left the building. He returned with Richard Meckstroth, executive vice president. He approached Kincaid and asked ''what was going on there'' (Tr. 52). Kincaid replied that he had received a referral from the hall and was available for work. Meckstroth said ''that they had placed a work order on Friday and he only got two people and he wasn't sure that he was gonna be able to use me, because they had transferred some of these people in from another job.'' (Tr. 52.) Meckstroth paid Kincaid and Whipkey 2 hours' showup time.[3]

The parties stipulated that from July 17, 1994, to date ''there has been work performed by other employees that this Charging Party, in this case could perform.'' (Tr. 73.)

Mills testified that after Kincaid was separated from employment other employees were brought to the Cabell Huntington Hospital and Marshall University sites. Six asbestos strippers and two laborers were employed at Cabell after July 14, 1994.

According to Mills:

> A. [T]he Cabell job, after Mr. Kincaid left, slowed down very briefly, just long enough for this paperwork to come through.
>
> And then there were probably four to six workers brought there for the next week within seven days after Mr. Kincaid's departure from that job. [Tr. 94.]

The Marshall job was manned by employees in part who switched from Cabell.

Assuming Kincaid's credibility, the General Counsel has established a prima facie case.

Jude testified and basically denied Kincaid's testimony respecting what was said at the time Kincaid was let go. Jude testified:

> Q. Tell us what you remember about the events leading up to and the occurrence of his layoff.
>
> A. Okay. The events leading up to—uh, we were in the process of doing a floor tile job. And we had been there a short time. We were close to completing that job.
>
> And, as I've done many times before on other jobs, I had a reduction in work force—uh, laid off. And, that particular day I called in Mr. Kincaid's time.
>
> And I believe about 2:00 I asked Mr. Kincaid to get his personal belongings and follow me. And we went down to the rear entrance towards the parking lot, where everyone parked.
>
> And—uh, I told him that—uh, we were having a layoff. And, as I do with everybody else, I try to—I knew he had a distance to drive. And I tried to let him go early. Uh—
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> Q. Did you pay him through the day?
>
> A. Yes, sir, I did.
>
> Q. Okay.
>
> A. And I told him that I had no problem with his work, nothing personal, as I've told hundreds of employees. But, we were reducing the work force due to the length of the job and the job was almost completed. And that is the only reason that Mr. Kincaid was laid off.
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> Q. Did you have any—did you make any other statement to him, that you recall, about anybody from the Company ordering you to lay him off?
>
> A. No, sir. [Tr. 122, 123.]

Jude testified that he had discussed with his project manager the day before Kincaid was let go that the job was coming to a close.[4] According to Jude, Kincaid was chosen because he had the shortest seniority on the project; Jude made the choice.

Jude further testified that Mills, prior to Kincaid's layoff, had complained to him that on the Marshall job he was not being paid overtime or a shift differential—Jude reported it to Ron Hampton, his supervisor. According to Jude, Kincaid was present at the conversation. Hampton told Kincaid that he would check into it with Rick Meckstroth. Jude relayed to Mills that the matter had been reported and ''they would get back in touch with him.'' (Tr. 132.)

Kincaid could have been transferred to another job if available. The project manager or Meckstroth would have made the transfer. It never entered Jude's mind to transfer Kincaid.

According to Jude's containment log on the Cabell project Kincaid, Mills, Presley, and Jude worked on July 14. On July 15, Mills, Presley, and Jude worked; on July 18, Mills, Presley, William Rogers, and James Stewart worked.[5] On July 20, Mills, Presley, and Jude worked, and on July 22, Mills, Presley, Rogers, and Jude worked.

Jude referred to Kincaid as an average to good worker. ''I would not have to watch over him, so to speak, as I would on inexperienced worker.'' (Tr. 213.)

Thomas Lee Burcham, president of the Respondent, testified that at the time Kincaid was laid off ''There was a very limited supply of licensed—we have to have these people licensed. And there were a very limited supply, at that particular time.''[6] (Tr. 151.) ''[W]e just can't go out and just bring in people. . . . They have to have the proper license.'' (Tr. 151.)

Burcham explained that at the end of a project an employee could be laid off or transferred. If an employee worked for the company within the last 90 days the company had recall rights.

Burcham also testified that he had engaged in a conversation with Ross about Kincaid's complaints. He further said that the Respondent ''might request one or two [referrals from the union] a week on the average.'' (Tr. 170.)

Resolving the question of credibility is an important factor in finding whether the Respondent is to be found guilty of an unfair labor practice. In this respect, demeanor is an important consideration.

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[3] Once the contractor places a work order with the hiring hall, the hiring hall has 48 working hours in which to fill the work order, exclusive of Saturdays, Sundays, and holidays.

[4] As noted hereafter, the job did not immediately come to a close.

[5] Jude testified that he knew Rogers and Stewart came out of the union hall.

[6] ''All the abatement workers, anyone who engages in asbestos removal in the State of West Virginia has to be licensed by the State.'' (Tr. 151.)

As noted by the Board in *Roadway Express*, 108 NLRB 874, 875 (1954): ''[C]redibility findings may rest entirely upon evidence through observation which words do not, and could not, either preserve or describe.''

In respect to demeanor, the Supreme Court has said in *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962):

> For the demeanor of a witness
>
> ''. . . may satisfy the tribunal, not only that the witness' testimony is not true, but that the truth is the opposite of his story; for the denial of one, who has a motive to deny, may be uttered with such hesitation, discomfort, arrogance or defiance, as to give assurance that he his fabricating, and that, if he is, there is no alternative but to assume the truth of what he denies.'' *Dyer v. MacDougall*, 201 F.2d 265, 269.

I am satisfied that the material facts revealed in the credited record and Kincaid's demeanor reflect that he was telling the truth. Thus I find that he was unlawfully laid off for submitting a grievance to the Union.

In this respect, the finding is bolstered by the following facts.

1. The Respondent knew at the time of Kincaid's layoff that he had submitted a grievance to the Union (Burcham's testimony).

2. Kincaid's grievance put in jeopardy Respondent's apparent practice of not paying contractual overtime and shift differential under certain circumstances.[7]

3. It was unlikely that the Respondent would have laid Kincaid off when according to Burcham there was a ''very limited supply'' of licensed people at that particular time.'' (Tr. 151.)

4. It is unlikely that the Respondent would have laid Kincaid off when the next day it asked the Union to send five employees.

5. It is unlikely that the Respondent would have laid Kincaid off when the project apparently could have utilized him at Cabell Huntington Hospital.[8]

6. It is unlikely that Respondent would have laid Kincaid off in view of his outstanding qualifications.

7. The Respondent's antagonism against Kincaid surfaced when a top officer of the Respondent, Vice President Meckstroth, although a request had been made to the union for five employees, excluded Kincaid.

8. It is incredible that the Respondent would not have transferred Kincaid, an excellent employee, rather than lay him off when it was placing an order for five additional employees with the Union.

In light of the foregoing, Respondent has not credibly explained why it chose Kincaid for layoff.[9] The probabilities support a finding that Kincaid was telling the truth when he quoted Jude as saying ''They don't like your running down to the hall.'' (Tr. 69.)

I find that by laying Kincaid off and by not putting him back to work for submitting a grievance to the Union, the Respondent violated Section 8(a)(1) and (3) of the Act and that had he not submitted a grievance to the Union he would have remained employed.

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction.

2. By unlawfully laying off Kincaid on July 14, 1994, and refusing to put him back to work on July 18, 1994, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3).

The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act. Having also found that the Respondent unlawfully laid off Ronnie Lynn Kincaid on July 14, 1994, and refused to put him back to work on July 18, 1994, in violation of Section 8(a)(3) and (1) of the Act, I recommend that the Respondent remedy such unlawful conduct. In accordance with Board policy, it is recommended that the Respondent offer Ronnie Lynn Kincaid immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, dismissing, if necessary, any employees hired on or since the date his discharge to fill the position, and make him whole for any loss of earnings he may have suffered by reason of the Respondent's acts here detailed, by payment to him of a sum of money equal to the amount he would have earned from the date unlawful action was taken against him to the date of a valid offer of reinstatement, less his net interim earnings during such periods, with interest thereon to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[7] Mike Workman who had been an asbestos supervisor for the Respondent until February 1995, testified that on occasion he was paid straight time for overtime. He was told, ''If I don't work the overtime some one else would, for the straight pay, because they need a job.'' (Tr. 77.)

[8] On July 14, four employees worked on the project; on July 15, three worked on the project; on July 18, four worked on the project; on July 19, three worked on the project; and July 22, four worked on the project. Two of these employees, Rogers and Stewart, had come through the hall.

[9] Once the General Counsel had shown by a preponderance of the evidence that the protected conduct was ''a motivating factor'' in the decision to separate an employee from employment ''the burden shifts to the employer to show that it would have discharged the employee even if the employee had not engaged in protected activity.'' *Blue Arrow, Inc. v. NLRB*, 725 F.2d 682 (6th Cir. 1983), enfg. 261 NLRB 940 (1982). See also *Wright Line*, 251 NLRB 1083 (1980); *NLRB v. Transportation Management Corp.*, 462 U.S. 398 (1983).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, Master Mechanical Insulation, Inc., Huntington, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off or otherwise discriminating against an employee or refusing to rehire him because he lodged a grievance with the Union in respect to an alleged contract violation.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Ronnie Lynn Kincaid immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as result of the discrimination against him, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful layoff and notify the employee in writing that this has been done and that the layoff will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Huntington, West Virginia, copies of the attached notice marked ''Appendix.''[11] Copies of the notice, on forms provided by the authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''